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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,217	08/05/2003	Joseph E. Motz	PLAY / 08	6853

7590 12/18/2003  
WOOD, HERRON & EVANS, L.L.P.  
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441 Vine St.  
Cincinnati, OH 45202

EXAMINER

BOSS, WENDY L

ART UNIT PAPER NUMBER

1775

DATE MAILED: 12/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/634,217

Applicant(s)

MOTZ ET AL.

Examiner

Wendy Boss

Art Unit

1775

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19-27 is/are allowed.
- 6) ☒ Claim(s) 1-6 and 11-18 is/are rejected.
- 7) ☒ Claim(s) 7-10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet.  
37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11/07/03.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Claim Objections*

1. Applicant is advised that should claim 17 be found allowable, claim 18 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claim 15 is rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,048,282 (Prevost et al.).

Prevost discloses a filled synthetic turf comprising a foundation; a backing residing on the foundation; a plurality of grass pile filaments secured to the backing and extending generally upwardly therefrom; and a particulate fill material residing on the backing to a desired height, the pile filaments extending above the fill material (see column 4, lines 42-49; and Figures 3 and 4). The fill material in the reference includes gravel and resilient particles, wherein the gravel

provides weight for holding the backing in place and the resilient particles provide resiliency for the turf (see column 6, lines 13-52).

4. Claims 1, 2, 4, 5, 11, 15 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,551,689 (Prevost).

Prevost discloses a filled synthetic turf comprising a foundation; a backing residing on the foundation; a plurality of grass pile filaments secured to the backing and extending generally upwardly therefrom; and a particulate fill material residing on the backing to a desired height, the pile filaments extending above the fill material (see column 9, lines 33-47; and Figure 1). The fill material in the reference includes a first lower layer of grave located on the backing and a second upper layer of resilient particles, wherein the first layer provides weight for holding the backing and the second upper layer provides resiliency for the turf (see column 9, line 57 through column 10, line 20). The pile filaments in the reference also comprise synthetic ribbons of selected length (see column 11, lines 3-10; and column 12, lines 13-19). It is also disclosed by Prevost that the second upper layer comprises synthetic particles, such as rubber (see column 9, lines 53-56; and column 10, lines 19-20). The reference also discloses that the backing has an open weave (see column 9, lines 37-40), which suggests that the backing is water permeable as recited in claim 11.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,551,689 (Prevost).

Prevost discloses a filled synthetic turf as shown above in paragraph number 4. The reference does not necessarily disclose that the gravel is pea gravel; however, it would have been obvious to one having ordinary skill in the art that any known type of gravel could be used as the lower fill layer. The reference also does not necessarily disclose that the height of the first lower layer is about equal to the height of the second upper layer; however, attention is directed to column 12, lines 1-5 where it is disclosed that the thickness of the upper layer can be varied depending on the desired resiliency.

7. Claims 12-14, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,551,689 (Prevost) in view of U.S. Patent No. 6,295,756 (Bergevin).

Prevost discloses a filled synthetic turf as shown above in paragraph number 4. Prevost further discloses that the gravel comprises particles having a diameter greater than 2 millimeters (see column 9, lines 59-63).

The Prevost reference does not necessarily disclose that there is a drainage member residing on the foundation; however, attention is directed to column 4, lines 28-30 of Bergevin, which discloses that synthetic turf may be provided with piping on the foundation to improve drainage. It would have been obvious to one having ordinary skill in the art to provide the Prevost turf with piping in order to improve drainage and prevent water from pooling on the turf surface.

*Allowable Subject Matter*

8. Claims 19-27 are allowed.
9. Claims 7-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
10. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not disclose or suggest an athletic surface comprising a foundation; a drainage member; a subsurface layer supported by the foundation and comprising a rubber filled synthetic turf; and a surface layer comprising a filled synthetic turf. The most relevant prior art of record is U.S. Patent No. 6,094,860 (Motz et al.), which discloses an athletic surface comprising a foundation; a drainage member; a subsurface layer supported by the foundation; and a surface layer comprising a filled synthetic turf. The subsurface layer in the reference does not comprise a rubber filled synthetic turf.

*Conclusion*

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wendy Boss whose telephone number is 703-306-5922. The examiner can normally be reached on M-Th 8:30a-6:00p; 2nd F 8:30a-5:00p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on 703-308-3822. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9092.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
Wendy Boss